

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: Anthony J. Dettore,

Debtor.

Case No. 15-45642
Adv. Pro. No. 15-4409
Honorable Thomas J. Tucker
Chapter 13

Anthony J. Dettore,

Plaintiff (Appellant),

v.

JEM Real Estate Preferred Fund I, LLC,

Defendant (Appellee).

Case No. 15-13986
Honorable Sean F. Cox

ORDER DENYING
APPELLEE’S MOTION FOR SANCTIONS

This action involved an appeal from a Chapter 13 Adversary Proceeding. On September 12, 2016, this Court entered an Opinion & Order affirming the bankruptcy court’s decisions. (Doc. #18). On September 26, 2016, Appellant Anthony J. Dettore (“Dettore”) filed a “Motion for Reconsideration / Rehearing,” (Doc. #23), which this Court denied on October 24, 2016. (Doc. #27).

Currently before the Court is Appellee JEM Real Estate Preferred Fund’s (“JEM”), “Motion for Sanctions Pursuant to Fed. R. Bankr. Pro. 8020.” (Doc. #20). JEM seeks sanctions against Dettore, arguing that Dettore’s appeal “was wholly without merit.” (*Id.* at 6). According to JEM, the “sole purposes of [Dettore’s] unwarranted and legally unfounded appeal in this matter were an [sic] improper ones—delay and harassment.” (*Id.* at 1). Dettore has filed a

response opposing the motion. (Doc. #24). For the reasons that follow, this Court shall **DENY** Appellee's motion for sanctions.

JEM brings its motion pursuant to Federal Rule of Bankruptcy Procedure 8020, which provides, in pertinent part, that “[i]f the district court ... determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.” Fed. R. Bankr. P. 8020(a). Bankruptcy Rule 8020 “is materially the same as Federal Rule of Appellate Procedure 38 (‘Appellate Rule 38’), and is intended to provide ... district courts hearing bankruptcy appeals with coextensive authority to award sanctions for a frivolous appeal.” *In re Reese*, 485 Fed. App’x 32, 35 (6th Cir. 2012) (citing Fed. R. Bankr. P. 8020 Advisory Committee Notes (1997 Amendment)). Thus, in determining a motion for sanctions under Bankruptcy Rule 8020, the Sixth Circuit has advised that courts look to cases applying Appellate Rule 38. (*Id.*).

This Court finds that sanctions are not warranted in this matter. A bankruptcy appeal is frivolous if “the result is obvious or when the appellant’s argument is wholly without merit.” *In re Smyth*, 470 B.R. 459, 462 (B.A.P. 6th Cir. 2012). While it is true that this Court disagreed with Dettore on each of his three arguments on appeal, this Court is not of the opinion that the arguments were “wholly without merit” so as to warrant the sanctions JEM seeks.

Accordingly, JEM’s motion for sanctions is **DENIED**.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: November 8, 2016

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel of record
on November 8, 2016, by electronic and/or ordinary mail.

S/Jennifer McCoy
Case Manager